

STEPHEN J. AKERLEY (Bar No. 160757)
PHILIP C. DUCKER (Bar No. 262644)
ADRIAN KWAN (Bar No. 300032)
MINTZ LEVIN COHN FERRIS GLOVSKY
AND POPEO P.C.

44 Montgomery Street, 36th Floor
San Francisco, CA 94104

Telephone: (415) 432-6000

Facsimile: (415) 432-6001

SJAkerley@mintz.com

PCDucker@mintz.com

AKwan@mintz.com

Attorneys for Defendant

IPCom GmbH & Co. KG

UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LENOVO (UNITED STATES) INC. And
MOTOROLA MOBILITY, LLC,

Plaintiffs,

v.

IPCom GmbH & Co. KG,

Defendant.

Case No. 5:19-cv-01389-EJD

**DEFENDANT IPCOM GMBH & CO. KG'S
ADMINISTRATIVE MOTION TO FILE
DOCUMENTS UNDER SEAL PURSUANT
TO CIVIL LOCAL RULES 7-11 AND 79-5**

Complaint Filed: March 14, 2019

Trial Date: TBD

Pursuant to the Northern District of California’s Civil Local Rules 7-11 and 79-5, Defendant ICom GmbH & Co. KG (“ICom”) respectfully moves for an order permitting it to file under seal portions of Exhibit A attached to ICom’s Motion to Dismiss (the “Motion”). As explained in detail in the declaration of Stephen J. Akerley (“Akerley Declaration”), filed herewith, Exhibit A contains confidential business information relating to ICom’s settlement and licensing negotiations with Lenovo. ICom seeks to file Exhibit A under seal. An unredacted version of Exhibit A is included with the instant motion to seal.

There are compelling reasons to keep settlement and licensing negotiations confidential in order to prevent third parties from utilizing it for improper purposes of obstructing settlement or “as sources of business information that might harm a litigant’s competitive standing[.]” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978); *see also Autodesk, Inc. v. Alter*, No. 16-cv-04722-WHO, 2017 U.S. Dist. LEXIS 70951, at * 23-24 (N.D. Cal. May 9, 2017). Disclosing the contents of ICom and Lenovo’s settlement discussions would harm ICom’s competitive standing because it would give parties in future negotiations with ICom access to comparative settlement pricing. *See Autodesk, Inc.*, 2017 U.S. Dist. LEXIS 70951, at *23. Further, these compromise offers are protected by Federal Rule of Evidence 408 under the same rationale, namely, “to encourage settlements which would be discouraged if such evidence were admissible.” Fed. R. Evid. 408, Notes of Committee on the Judiciary, Senate Report No. 93-1277.

///

///

///

///

///

///

///

///

///

1 IPCom's request is also narrowly tailored. The only portions IPCom seeks to redact are the
2 exact settlement negotiation amounts disclosed. *Autodesk, Inc.*, 2017 U.S. Dist. LEXIS 70951, at
3 *25 (granting motion to seal portion of License Agreement "which discusses the settlement
4 payment amount and terms[.]").

5
6 Dated: July 2, 2019

Respectfully submitted,

7 MINTZ LEVIN COHN FERRIS GLOVSKY
8 AND POPEO P.C.

9 /s/ Stephen J. Akerley

10 By: Stephen J. Akerley
Philip C. Ducker
Adrian Kwan

11 Attorneys for Defendant IPCom GmbH & Co. KG
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28